City of Lafayette Staff Report

For:	City Council
By:	Niroop K. Srivatsa
Date Written:	July 18, 2008
Meeting Date:	July 28, 2008
Subject:	GP01-06/RZ01-06CC: KO ARCHITECTS (APPLICANT), THE WOODBURY, LLC (OWNER), P1 ZONING: Request for approval to amend the conditions of approval to allow the Developer to pay the City's impact fees prior to the issuance of the certificate of occupancy rather than prior to the issuance of a building permit. Request for approval of an exception to Section 1-624 (b) of the Lafayette Municipal Code. Project Location: 3758 Mount Diablo Blvd., APNs: 241-010-024, 033, 034, 040.

Purpose

To approve the applicant's request to pay the City's impact fees prior to the issuance of the certificate of occupancy rather than prior to the issuance of a building permit. This request requires the review of the City because it involves a change to a condition of approval of the P1 rezoning and an exception to Section 1-624 (b) of the Lafayette Municipal Code.

Project Status

In September 2007, the City Council approved the applications for a general plan amendment and rezoning to P1 (planned development) to accommodate a project consisting of 80 for-sale residential units. In March 2008, the planned unit development was amended to reduce the number of units in The Woodbury from 80 to not less than 60. The applicant has submitted improvement plans and the final map for the City Engineer's review. Additionally, final landscape, signage and lighting plans have been submitted and were considered by the Design Review Commission on July 8th.

Request

As the applicant's attached letter indicates, the downturn in the housing market has impacted the phasing of construction of The Woodbury condominium development. The strict requirements of the lending institutions have resulted in the need to phase the project as follows:

Phase 1: Building 2 (with lobby), 3 and 5 (clubhouse), the basement parking under Buildings 2-5 and the improvements to the EBMUD right of way

Phase 2: Building 4 (easternmost building)

Phase 3: Building 1. The units in the existing three story apartment building will be rented out until Phase 3 is started

The applicant is requesting that the City allow payment of the walkways, parkland dedication and regional traffic mitigation fees at the final inspection/certificate of occupancy stage of the building permit process rather than at the issuance of building permit. This would allow the applicant to construct the buildings in each phase and pre-sell some of the units.

At present, the condition of approval states:

Each unit constructed in the condominium project shall be subject to Parkland Dedication Fees (Section 6-1600 et. seq.) and Walkways Fees (Section 8-113) and Regional Traffic Mitigation Fees payable prior to issuance of a grading or building permit, whichever is first.

Section 1-624 (b) of the Municipal Code

This section pertains to the Lamorinda Transportation Fee Program's regional traffic mitigation fee and states:

The fee is imposed as a condition to and shall be collected before the issuance of a building permit.

The applicant seeks approval to pay the City's impact fees prior to the issuance of the certificate of occupancy rather than the building permit.

Planning Commission Recommendation

On July 3rd, the Planning Commission conducted a public hearing on the matter and by a vote of 6-0 with Commissioner Chastain absent, recommended approval of the request to the City Council.

Parks, Trails and Recreation Commission Recommendation

On July 16th, the Parks, Trails and Recreation Commission considered the matter. By a vote of 4-1, the Commission voted to support staff's recommendation based on the condition that the fee charged is the fee that was in effect when the tentative map was approved. If that is not the case, the Commission recommended that the applicant pay the fees that will be in effect at the time of the Certificate of Occupancy issuance subject to the determination by the City Attorney. Given that the applicant received approval of a vesting tentative map, the City Attorney has determined that the applicant shall pay the fees that were in effect at the time the application was deemed complete.

Staff Comments

In April 2008, the applicant - The Woodbury, LLC – met with staff to discuss the phasing of the project and to request deferral of payment of the City's impact fees. Staff discussed the request with Councilmembers Tatzin and Federighi (the subcommittee that negotiated the Owner Participation Agreement) and received their preliminary approval. By all indications, the construction of The Woodbury is on track. As stated earlier, the applicant has submitted improvement plans and the final map for the City Engineer's review. The final landscape, signage and lighting plans have been submitted and were considered by the Design Review Commission on July 8th. The applicant and staff have met with EBMUD to finalize the improvements to the EBMUD ROW. Finally, the applicant now owns and controls the entire site.

Staff recommends approval of the applicant's request to defer payment of the impact fees. The City has a practice of placing several "holds" during the various stages of building inspection and will not

release those "holds" until an applicant has satisfied certain conditions of approval. In this case, the applicant will not be allowed to schedule a final inspection nor occupy a building until these impact fees are paid and other conditions of approval are satisfied.

Recommendation

Approve the applicant's request to pay the City's impact fees prior to the issuance of the certificate of occupancy rather than prior to the issuance of a building permit.

Attachments

1. Letter from The Woodbury, LLC, dated May 12, 2008
2. Draft minutes of the July 3rd Planning Commission meeting

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Recommendation: Recommend approval to the City Council.
Project Planner: Niroop Srivatsa, Tel (925) 299-3206, nsrivatsa@lovelafayette.org

Ms. Srivatsa gave a staff report stating that one of the standard conditions of approval for all applications is when impact fees are to be paid by the applicant. She said typically the fees are to be paid at the time of issuance of building permit. She indicated that the applicant sent a letter requesting to pay the fees prior to scheduling of the final inspection rather than at the issuance of permit. She said this was initially discussed with the Council subcommittee and then the formal process of making a request to the City began. She said staff recommends approval of the deferred payment. She noted that it is tough housing market. As of now, The Woodbury is on track to begin construction, it is scheduled to go before Design Review Commission on July 8th, the applicant has already submitted the final map to the City Engineer for review and they are asking for some lenience as to when the payment should be made.

Vice Chair Lovitt asked if the City has granted a deferred payment in the past.

Ms. Srivatsa stated not in her recollection.

Commissioner Curtin-Tinley asked how long will it be between building permit and occupancy.

Ms. Srivatsa stated that the owner participation agreement says18 months between start to end of construction for each phase, but it is an estimate.

Commissioner Curtin-Tinley asked how much the development fees total per unit.

Ms. Srivatsa stated the average parkland dedication fee is about $6,000, the regional traffic mitigation fees are about the same or lower, and the walkways fee is $50 per unit.

Chair Mitchell noted that there are three types of fees. He asked if the City received the money would it be used sooner. He asked if there is there a time value that the City would be losing by deferring the collection of fees.

Ms. Srivatsa agreed that there is the time value of money. She stated that the traffic fee goes into a common pot and it is used to fund Lamorinda projects. She said there is a slim chance that a project may be deferred because of funds being received late but given the cost of a capital improvement project or a park improvement project, The Woodbury's contribution is a small amount compared to what those projects cost.

Chair Mitchell noted that if the project doesn't go to occupancy and the applicant comes in for revisions there could be a substantial time before the City receives the funds.

Ms. Srivatsa agreed with Chair Mitchell's statement noting that fees would not be collected until occupancy however the fees will be paid prior to the impact being made.

John Frasier stated he works for Branagh Development and is the project manager for the Woodbury. He said the financial market has changed dramatically and the underwriting criteria has changed regarding the equity required to do a project. He said the applicant already has $10 million invested and the lenders would like to see more money invested. He noted the cost of that would put a severe strain on the project's viability. He said he is looking for ways to defer upfront costs. He said this deferral of payment is important to the project and the fees will be paid before people use the property. He noted that the project will include significant improvements for public benefit.

Chair Mitchell asked if the fees amounted to about one million dollars.

Mr. Frasier stated he has totaled $350,000 for parkland fees and $222,000 for regional mitigation fees.

Ms. Srivatsa noted it is now a 65-unit project.

There was no public comment.

Chair Mitchell close the public portion of the hearing

Commissioner Humann made a motion to recommend approval to City Council, seconded by Commissioner Ateljevich, which carried (6-0-0)

The Woodbury, LLC
100 School Street
Danville, CA 94526

May 12, 2008

Niroop Srivatsa
Planning & Building Manager
3675 Mt. Diablo Blvd., Suite 210
Lafayette, CA 94563

Re: The Woodbury

Dear Niroop,

We would like to request the postponement of payment of the City's development impact fees until the final inspection/certificate of occupancy for each building as opposed to payment at the issuance of building permit.

Financial markets have tightened and the lenders we have been dealing with are now requiring that we phase our project. If we are allowed to postpone the payment of fees we will be able to complete a significant portion of the project in the first phase. We think this will be beneficial to all parties involved.

Sincerely,

John S. French